IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 161 OF 2004

Ranjit Singh Bora .. Petitioner.

Vs.

The Union of India and Ors. ..Respondents.

Mr. Ajay Pal Singh for the Petitioner.

Mrs. S. V. Bharucha for Respondents.

CORAM : F.I. REBELLO AND ANOOP V. MOHTA,JJ.

DATED : 08TH MARCH, 2006.

P.C.:

1. The petitioner was recruited as Matric Entry Recruit on 4th February, 1985. He completed his basic training at INS Mandovi at Goa on 15th September, 1985. He was then transferred to INS Venduruthy, Kochi for underwater weapons, third class course. Between November, 1985 to January, 1986 he developed stomach problems and then reported sick as out patient and remained under medical care. From the month of January, 1986, he was withdrawn from the said course with instruction to back batch and was transferred to staff for duties. In February, 1986, the petitioner was hospitalized and diagnosed as a case of "chronic

duodenal ulcer" and was under medical treatment. In April, 1986 the petitioner was placed in low medical category S3 A2, (unfit for sea service but fit for ashore service with restrictions). The petitioner was not included in the next course, as he was of low medical category. On 10th April, 1987 an order was passed, discharging the petitioner's services as service as no longer required. It is the case of the petitioner that around 26th May, 1987 the release medical board has placed the petitioner in medical category S3 A2 (Permanent) with 30% disability. On 30th June, 1987, he was discharged from the Naval service as service no longer required under the provisions of regulation 279 of the Regulations for the Navy Part III (Statutory). The petitioner applied for disability pension on 5th February, 1988 and received a communication on 18th March, 1988 to the effect that the petitioner was discharged as SNLR and not entitled to the retiral benefits. By letter 31st October, 1988 it was further clarified that the petitioner was discharged as SNLR and not on medical grounds. It is the case of the petitioner that thereafter, he went on corresponding, between 19th April, 1989 to 21st May, 2003. This petition came to be filed thereafter on 15.01.2004.

2. At the hearing of this petition, on behalf of

the petitioner, the learned counsel submits that the petitioner was discharged on account of medical unfitness as is evidenced by the certificate issued by the release medical board, which has placed him at 30% disability and as such he is entitled for disablement pension. The learned counsel for the petitioner placed reliance on the Navy (Pension) Regulations part- III and more specifically on Rule 2, vide Appendix V. Rule 2 provides that invalidment from service is a necessary condition for the grant of disability pension. The Rule also sets out that an individual who at the time of his release under the Release Regulations is in a lower medical category than that in which he was recruited, will be treated as invalided from service. It is also pointed that the ailments i.e. Duodenal Ulcer is included under the rule, as one of the diseases in terms of what is set out in para 8 of Appendix- V, under head (C), which are diseases affected by dietary compulsions, such as duodenal ulcer.

3. The learned counsel has placed reliance, firstly on the judgment of the learned single Judge of the Delhi High Court in **Ex L/NK Gordhan vs. Union of India and Ors., reported in Mil LJ 2002 Delhi 16.** In that case, the Chief Controller of Defence Accounts (Pension) had overridden the opinion of Medical Board by reducing the

percentage of disability assessed by the Medical Board and action of CCDA (Pension) in not accepting opinion of medical board. The High Court held that the opinion of the Medical Board could not be rejected by the Authorities.

. Reliance was next placed on the judgment in the case of **Pargan Singh vs. Union of India decided on 17.7.2000; reported in 2000 (5) SLR -252.** In that case the petitioner had put in 27 years of service and was discharged from service on medical grounds being affected by "Affective Psychosis". The medical board opined that the disease was aggravated by stress and strain of service. The opinion of the medical board was not accepted by the CCDA (Pension). That was the issue before the learned single Judge.

. The next judgment cited was in the case of **B. Sergeant Satnam Singh Bijwa vs. Union of India & Ors., reported in 2000 (5) SLR -494.** In that case also the petitioner had put in 14 years of service and was invalidated on account of neurosis historical conversations with 40% disability and was placed in the medical category ‘EEE’. The respondent authority took a view that the disease is a constitutional one, not attributable to the military service and therefore, the

petitioner is not entitled to the disability pension. The opinion of the medical board was not accepted by the respondents as in their opinion, the disease was a constitutional one and not attributable to the employment of the petitioner and therefore, the petitioner was in the military service. That was not accepted.

4. Considering the above, we may now examine the case of the petitioner. It is no doubt true that the petitioner was issued a certificate by the medical board and at that time, his disability was assessed at 30%. The petitioner, however, was discharged as SNLR. Thus the petitioner worked in the Navy between 15th September, 1985 to 30th June, 1987. His sickness was diagnosed as ‘chronic duodenal ulcer’. On account of that, the respondent discharged the petitioner from service as SNLR in accordance with regulation 279 of the Regulations. Regulation 279, amongst other, enables the respondent to discharge a sailor on the ground that retention would be detrimental to the service. This detriment to service need not be attributed to any misconduct. It could be attributed to his health also and consequent bearing on his work performance. In the instant case, as pointed out earlier, the medical board had fixed the disability at 30% and in that context if

the petitioner had been discharged on account of medical unfitness, his case would have been covered by Rule 2 of Appendix V.

5. In the instant case the Authorities discharged the petitioner under regulation 279. Before joining the service on 15th September, 1985, when he was deputed for training, the petitioner developed stomach problems and reported as sick patient, which ultimately was diagnosed as duodenal ulcer. In our opinion, considering the medical history of the petitioner, during the period of service of the Navy, it cannot be said that the action of the respondents in discharging him as SNLR was without the authority of law. Apart from that the the petitioner did not move a judicial forum for nearly 17 years. Mere representation is no answer to delay or lapses. A person, entitled to a right, must move the court at the earliest. If the petitioner had filed a suit, he had to file it within three years from the cause of action. That would have been a reasonable period also for the petitioner to approach this court on the facts of the present case, so as to exercise our extra ordinary jurisdiction. The petitioner choose not to do so. Considering this, no case is made out.

6. Rule discharged with no order as to costs. The

petition is dismissed with no order as to costs.

08.03.2006 (F.I.Rebello,J)

(Anoop V.Mohta, J)

.....